MINERAL LOCATION

ANNOTATED

United States, California, Oregon, Nevada, Arizona.

SYLLABI OF LEADING DECISIONS

COMPILED BY

CHAS. L. REYNOLDS

CIVIL AND MINING ENGINEER,

UNITED STATES MINERAL SURVEYOR

for Oregon, California, Nevada and Arizona

METROPOLIS TRUST BLDG.

SAN FRANCISCO, CAL.

PRICE, $1.00 PAPER; $1.50 CLOTH

MINERAL LOCATION

ANNOTATED

United States, California, Oregon, Nevada, Arizona

SYLLABI OF LEADING DECISIONS

COMPILED BY

CHAS. L. REYNOLDS

CIVIL AND MINING ENGINEER,

UNITED STATES MINERAL SURVEYOR,

FOR OREGON, CALIFORNIA, NEVADA AND ARIZONA.

METROPOLIS TRUST BUILDING,

SAN FRANCISCO, CAL.

PRICE, $1.00 PAPER; $1.50 CLOTH

TN223
R5

LIBRARY of CONGRESS
Two Copies Received
OCT 24 1908
Copyright Entry
Oct. 13, 1908
CLASS a XXc. No.
219639
COPY B.

COPYRIGHT 1908, BY CHARLES L. REYNOLDS

SAN FRANCISCO, CAL:
DETTNER PRINTING PRESS
1908

8-31652

CONTENTS.

United States Mining Laws 5
Regulations of General Land Office 12
Discovery 20
Location and Record 20
Boundaries 22
Annual Labor 23
Apex 24
Placers 25
Tunnel Sites 27
Millsite 28
Agent 29
Water 30
Aliens 30
United States Mineral Surveyor 31
Syllabi—Discovery 33
" Location and Record 35
" Boundaries 39
" Annual Labor 41
" Apex 44
" Placers 48
" Tunnel Sites 53
" Millsite 55
" Agent 57
" Water 58
" Aliens 60
" United States Mineral Surveyor 61
California Location 64
Arizona Location 65
Nevada Location 66
Oregon Location 69

PREFACE

Probably no business is as fruitful a source of expensive and tiresome litigation as mining. The very order of things is conducive to this. The primary, possessory title is usually acquired by a rough miner, or prospector, who lacks the technical knowledge for enclosing a hidden vein with boundaries that will best safeguard his future interests.

On making a discovery, he proceeds to locate his claim, doing only that which he deems essential, such as a little mining work, staking out his ground and posting and recording his notice. Sometimes this is done properly, but more often it is not. Later the claim is worked, the property becomes valuable, and then the trouble begins.

On acquiring an unpatented mining property a survey is generally called for. This survey too often is simply a measurement from stake to stake and the setting back of one corner to gain parallelism of the end lines. Secure in the safety of this survey, mining is proceeded with. Later the encroachments of adjoining claims begin to be felt; there is a possible loss in extralateral rights and every mistake in the preliminary location is experienced in the loss of money, time, and patience. Possibly, a little wedge was left on the surface; this little wedge may be made to expand with depth, taking in the pay chute itself; a water right should have been secured, or a mill site; a piece of apparently worthless ground has to be purchased for convenience, and so on without end.

In the first place this is all unnecessary and uncalled for, as an engineer after surveying and plotting should foresee these troubles and correct them before it is too late. An amendment in one place, extending a side line only a few feet, might, if the strike were later found to cross the claim, mean the difference between a valuable and worthless piece of property: that is the engineer's business; if he does not know how to correct these matters he is useless for the purpose, as any one with the slightest knowledge of measurement, given a compass and a tape, would have done as well so far as any economic purpose was concerned. Recollect that a mining survey is a different proposition from running lines and setting up corners. It should include, with other matters, a general knowledge of the mining laws and their intricacies and the legal methods of overcoming existent mistakes.

In the writer's personal experience most of the mining litigation he has observed could have been prevented if the original manager or engineer had known and rectified the mistakes of the locator and taken advantage of his statutory privileges.

All too frequently the engineer goes into the field equipped with first-class instruments, a high grade of technical skill in measurement, but with a total lack of knowledge of the main essential for the work he is to undertake.

Mining-location law is not a matter to be picked up lightly, but requires study and, essentially, experience.

That this little book may tend to correct many misconceptions and serve the purpose for which it was written is the author's earnest wish.

UNITED STATES MINING LAWS

AND

REGULATIONS THEREUNDER

TITLE XXXII, CHAPTER 6, REVISED STATUTES.

MINERAL LANDS AND MINING RESOURCES.

SEC. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral lands reserved.

4 July, 1866.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Mineral lands open to purchase by citizens.

10 May, 1872.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation neces-

Length of mining claims upon veins or lodes.

10 May, 1872.

sary. The end lines of each claim shall be parallel to each other.

Proof of citizenship.

10 May, 1872.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locators' rights of possession and enjoyment.

10 May, 1872.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels, rights of.

10 May, 1872.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

Regulations made by miners.
10 May, 1872.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

Patents for mineral lands, how obtained.
10 May, 1872.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by

or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

Description of mining vein or lode claims.

10 May, 1872, amended Apr. 28, 1904.

SEC. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the

Patents to conform to official monuments.

monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Monuments to govern descriptions.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Conformity of placer claims to surveys, limit of.

9 July, 1870.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Subdivisions of ten-acre tracts; maximum of placer locations.

9 July, 1870.

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivision of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

Conformity of placer claims to surveys, limitation of claims.

10 May, 1872.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained

Where veins intersect, &c.

10 May, 1872.

within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for nonmineral lands, &c.

10 May, 1872.

SEC. 2337. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

Entry and patenting of lands containing petroleum and other mineral oils under the placer-mining laws.

Act of Congress approved Feb. 11, 1897.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims; *Provided,* That lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof.

Restoration of mineral or agricultural lands to the public domain.

Act June 4, 1897.

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

Mining laws extended to saline lands.

Act of Congress approved Jan. 31, 1901.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims: *Provided,* That the same person shall not locate or enter more than one claim hereunder.

Assessment required for oil mining claims.

Act of Congress approved Feb. 12, 1903.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer-mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: *Provided,* That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims.

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE REGULATIONS

NATURE AND EXTENT OF MINING CLAIMS.

1. Mining claims are of two distinct classes: Lode claims and placers.

LODE CLAIMS.

2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, *other* than the one named in the original location, to such as were not *adversely claimed on May 10, 1872,* and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after the 10th May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of *fifteen hundred feet,* but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed three hundred feet on each side of the middle of the vein at the surface,* and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond three hundred feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet

can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. Locators can not exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located, by reference to some natural object or permanent monument as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of *bona fide* prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

12. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims may be made upon any one claim. Cornering locations are held not to be contiguous.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several coowners to contribute his proportion of the required expenditures, the coowners who have performed the labor or made the improvements as required may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest

the claim for at least once a week for ninety days; and if, upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent coowner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his coowners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent coowner failed to contribute his proper proportion within the period fixed by the statute.

TUNNELS.

16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent, well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. A full and correct copy of such notice of location defining the

tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

PLACER CLAIMS.

19. But one discovery of mineral is required to support a placer location, whether it be of twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

20. The act of August 4, 1892, extends the mineral-land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands. Registers and receivers should make a reference to said act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any State are not subject to entry under said act.

21. The act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.

22. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

23. In subdividing forty-acre legal subdivisions, the ten-acre tracts must be in square form, with lines at right angles with the lines of the public surveys; and the notice given of the application must be specific and accurate in description.

24. A ten-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but, in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

25. The proof of improvements must show their value to be not less than *five hundred dollars* and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two

or more disinterested witnesses. The annual expenditure to the amount of one hundred dollars, required by section 2324, Revised Statutes, must be made upon placer claims as well as lode claims.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim, made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than twenty acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein; that is, a location by two persons can not exceed forty acres, and one by three persons can not exceed sixty acres.

30. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

REGULATIONS UNDER SALINE ACT.

31. Under the act approved January 31, 1901, extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States and Territories and the district of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any

form, and chiefly valuable therefor, with the proviso "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided,* He has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

33. In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the notice of location presented for record and the application for patent must each contain a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands nuder the provisions of this act. Assignments made by persons who are not severally qualified as herein stated will not be recognized.

PROCEDURE TO OBTAIN PATENT TO MINERAL LANDS.

LODE CLAIMS.

34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor-general of the State or Territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground.

MILL SITES.

61. Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of mill sites, is embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purposes by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an

independent application, secure a mill site if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

64. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

36. The surveyors-general should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than *two miles* in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the mineral surveyor at the time of his making the particular survey and be made a part hereof.

38. The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

MINERAL LANDS WITHIN FOREST RESERVES.

114. The act of June 4, 1897, provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

The act also provides that "The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by *bona fide* settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located."

For further instructions under this act see circular of April 4, 1900 (30 L. D., 23, 28-30).

DISCOVERY.

The first requirement in obtaining possessory title to a portion of the mineral public domain is the discovery of mineral.[1] This discovery must be made on unappropriated mineral land in the public domain,[8] and it may be made in a national forest reserve, and title obtained.[14]

It is not necessary that the appropriator be the first discoverer, as, in the relocation of an abandoned claim, the discovery of the original location can be used.[11]

No claim is valid without a legal discovery.[2]

A discovery to meet the requirements of the statute must be made on rock in place,[4] bearing any of the precious metals in sufficient quantities to justify a man to expend his time and means in developing the ground.[3]

It is not required that the rock be rich, or poor, or even of economic value,[7] but it must be something beyond a mere guess on the part of the appropriator.[6] Mere indications, however strong, would not be sufficient on which to base a location.[5]

The posting of a notice and marking the boundaries of a claim without a discovery would initiate no right, and would be treated as a mere speculation,[9] although if a later discovery were really made it would legalize the previous acts and make a valid location if it were done before the entrance of intervening rights of others;[12] but in this, as in all cases of this description, the one who first made the discovery would hold the claim.

Two competing prospectors, working in the same territory and both searching either by shafts, tunnels, or other methods to find a blind vein, would each be entitled to his own individual working without interference from the other, until one or the other of them made his discovery; then the discoverer would have the right to oust the other through the courts.[13]

Although a single discovery would not justify the locating of a full claim on either side, still it is held that a shaft situated across the end line of a claim, showing a defined vein on both sides, is sufficient discovery to justify the location of the other claim;[10] yet it would be better to make separate discoveries, if possible, a little distance apart.

LOCATION AND RECORD.

Sec. 2324, Revised Statutes, does not specifically require a location notice[32] to be either posted[29] or recorded, but exacts that if a record is

made that it shall contain certain specific details[36] and it gives the right to States, Territories, and mining districts to make such laws and regulations not in conflict with the United States laws as they may deem essential.[29] Regardless of this, it is questionable whether it would be safe in the absence of such local statutes to fail to initiate title, without both notice and record. Miners are accustomed to look on both as indispensable, and it is far safer to comply with their ideas on this subject, saving both trouble and litigation.

The usual custom is to post a notice of location at or near the discovery point, describing as well as the circumstances will permit the claimed location, its size, and the courses of the lines, giving the names of the appropriators, their address, and date.[36] This notice does not need to be, nor is it, very concise,[30] but a more detailed and fuller copy is recorded[38] with the district recorder if there is one, or with the county recorder, or with both.

This latter record must contain all the statutory requirements[36] and should be sufficiently full to be able to identify the ground claimed,[31] as it is really the inception of the paper title and operates as notice to the world of the locator's claim to the ground.[33]

Notices are not conclusive of the facts they recite as against an adverse claimant, but are competent evidence of their being made and filed and are important links in the title;[28] lacking contest, they would be unquestioned.

The correct dates of location should be used, antedating being held a fraud.[24]

The object of the record is to identify the claim,[37] and ordinarily will bind the locator as to its locus,[34] but where the monuments or markings on the ground vary from the record, the monuments will govern.[35-56-57]

The law recognizes the fact that the locator is laboring under difficulties in making his location and will generally make mistakes in his record,[21] and, therefore, liberally construes them.[27]

The statute requires a record to contain a tie to some natural object, or permanent monument; this may be another mining claim in the neighborhood,[22] or, if the surroundings of the country do not contain such mark, stakes driven in the ground are sufficient.[23] Such natural objects may be elsewhere than on the ground located; a post firmly planted in the ground, or a mining shaft[39] or a gulch in the vicinity will answer.[25] What constitutes a suitable record is a question of fact, and not of law, and should be left to a jury to determine.[40]

The courts are indulgent and favor *bona fide* locators, dealing leniently with their location notices[27] whenever these questions arise. They consider a mistaken record as natural to a location.[21]

Where an error of record is found it should be corrected by an amendment.[41] Most of the mining states have statutes allowing amended loca-

tions, but irrespective of this there is reason why an amendment to the record title be made if no one's rights are interfered with.[42]

The location record is generally full of faults and omissions, incorrect measurements, etc., end lines not parallel, claim too short or too long, and, possibly, not laid out along the vein. Later developments disclose these omissions or errors and the record is corrected by an amended notice.[21] This amended notice can not be construed as an abandonment, as that is a question of intent,[20] and the evident intent of the amended notice is to preserve and not jeopardize. The amendment may go to the extent of swinging the claim to appropriate other ground if no intervening rights have vested,[26] and if to no one's injury.

BOUNDARIES.

The only requirement of the statute is that the end lines of a claim shall be parallel.[62]

The ideal claim, for reasons later seen, should be in the form of a rectangle or a parallelogram.[64]

The statute requiring that end lines shall be parallel has for its basis the right of the locator to follow his vein on its dip in a downward course wherever it may go, exerting his extralateral rights within the planes of his end lines protracted downward,[65] but where the discovery vein departs from the side line is drawn the real end line.[55]

If the lines were not parallel, his underground rights would either extend themselves fan-shaped to the injury of the property rights of others, or, by contraction, work himself injury.

End lines must be straight and unbroken,[50] and as a triangular-shaped claim gives no extralateral rights,[63] there must be parallel end lines at either end of the claim.[62]

It frequently happens that in locating a fractional claim the senior claims bounding it will cause a non-parallelism of both sides and ends. In this case the monuments should be placed on the adjoining claims[52] if this can be done peaceably without trespass.[51] Of course, the location notice should except and disavow any claim to the ground of the senior location in conflict; should, however, there be an objection, a location may be made by posts, or monuments, and written notices at either end of the lode line without setting out the exterior boundary stakes,[66] or by setting up witness stakes at the nearest point on line.

An end line protracted across a senior location, although claim is expressly waived to the conflicting area thereby produced, still continued to be the end line for extralateral purposes.[53]

Owing to the lack of knowledge of the course of a vein at the time

of location, it frequently happens that the apex does not run along the located lode line, but comes in through one end and passes out at a side line;[61] then at this point of intersection a line parallel to the end line is projected across the claim and extralateral rights prevail between these two points downward.[55]

The end lines of the discovery vein when established become the end lines of all secondary veins as far as extralateral rights are concerned;[60] although on patented ground the secondary veins could be worked within the planes of the boundaries outside the newly established end lines,[54] but there would be no extralateral rights to be assumed.[59]

If a vein entered and passed out of the same side line it would have extralateral rights on planes parallel to the end lines at the points of entrance and exit.

The showing that a secondary vein ran from one end line to the other would not affect the extralateral rights of the discovery vein as determined by its exit from a side line.[59]

Should a discovery vein enter one side line and pass out the opposite side line, the side lines would become end lines, and the end lines side lines, and the extralateral rights would be assumed from the new end lines.[64] This is a case where it would be necessary to have located originally parallel side lines, otherwise no extralateral rights could be acquired.

ANNUAL LABOR.

The possessory right of the locator is conditional on his doing his annual assessment work.[71] This has been the condition prescribed in all legislation either of Congress, State, Territory, or district rule or regulation.[73]

The statutory time for doing this work is in the year succeeding the location year,[70] and may be done at any time during that year.[75]

If work is commenced the last day it must be prosecuted continuously, with the exception of legal holidays,[77] and the full labor requirement completed,[78] as mining rights are not open to relocation until the prior locator has abandoned the ground,[76] and this forfeiture can only be established on clear and convincing proof;[72] and even if the claim is open to relocation by reason of the nonperformance of the assessment work, and the owner performs such work before a relocation is made, his rights are renewed.[74]

If the work is not started at this time, but after years of neglect, and no intervening rights have crept in, it will revive the original title.[79]

In determining the amount of work done to constitute the assessment work, the test is not what was paid, nor the contract price, but what was the reasonable value of the work or improvements.[85]

Work may be done anywhere on the surface or anywhere below within the lines;[82] or it may be done outside the claim if for the purpose of developing it.[83]

The assessment work may be done on one of several adjoining claims if the work is really for the benefit of all, and it would make no difference if the work were done in a patented claim for the benefit of possessory locations,[81] but such claims must be contiguous.[80]

But whether the work was, or was not, done to benefit all the claims is a question for a jury to determine.[84] A district rule may require more than the statutory value of assessment work, but it can not decrease the amount below this;[86] or it may require annual labor during the location year,[87] but a rule fixing a given number of feet of shaft, or tunnel, as assessment work will be void if the shaft, or tunnel, should cost less than the one hundred dollars prescribed.[89]

Work must be continued annually on all possessory claims and only ceases to be required when entry is made, and the land paid for.[88]

APEX.

The apex of a vein is the upper, or terminal, edge on or nearest the surface of the earth,[90] and no technical refinements are required to define it.[108]

If the vein, instead of showing an end, flattens out or turns over and goes onward, or downward, such place is not its true apex;[91] but if, in following a vein downward on its dip from a true apex, a fold, or swell, be encountered, even if it be elevated higher than the apex and it then descends, giving the vein a general downward course, the extralateral rights will still be preserved.[112]

The apex of a vein may be a point, again, a line or edge of great length,[92] but wherever it is, the boundaries laid on the surface of the ground whose vertical planes will enclose it, will take the title to[90] it with all its extralateral rights[92] and it may be followed to any depth through adjoining property.[111]

Any part of an apex of a vein found within the boundaries of a claim is sufficient to give title,[92] whether it be the discovery or a secondary vein; if the latter, however, its extralateral rights will be determined by the same rights which the discovery vein may have.[115]

At times a discovery may be made by a tunnel, or shaft, on the dip of a vein. It is then assumed that the vein ascends upward at the same angle,[94] but great care should be exercised in laying out the location in this case and it would be far better to raise to the surface to prove apex, as no extralateral rights can otherwise be obtained.[95] Invariably

the burden of proof rests with extralateral claimants,[96] and a preponderance of evidence is required;[97] this would be especially so where the vein has barren zones,[100] as the presumption of ownership is within the vertical planes of the claim until the exterior apex right of intrusion is determined.[107]

A locator, or patentee, owns all veins, lodes, etc., within his vertical lines, subject only to the extralateral rights of others; but the rights must be proven indisputably by any one asserting them.[98]

A flat, or so-called blanket vein,[106] is classed with other lode deposits,[109] as the law considers all veins more or less vertical,[110] and the slightest inclination of the vein from the horizontal is sufficient to establish its dip.[93] With this class of deposits, however, care should be used to establish the higher end, or edge, as even if the vein outcropped at the surface, and the inclination of the body was in the slightest degree upwards, it would give no extralateral rights.[113] In this connection it is well to call attention to the fact that the outcropping of a vein is not necessarily the apex; it may be the cropping of the side of the dip,[116] or of the bottom, which nothing but exploration would determine.

A right to follow a vein on its dip[111] does not permit its being followed on its strike within the limits of another's ground.[117] If followed on its dip and a vein apexing in another valid existing location is encountered and crossed, the junior location has no right to the ore at the intersection, but does have a right of way through it.[118]

If the junior vein, however, unite with the senior, its rights cease and the vein below becomes the property of the senior.[99]

If on its strike the apex of the vein passes through the end line and a side line it does not lose its extralateral rights,[101] but those rights will be preserved as far as he holds the outcrop within his lines[102] bounded by the vertical plane of the end line and a parallel plane at the point where the vein apex departs from the side line.[103] If, however, the apex curves back again through the same line and then crosses the other end line, it will not be entitled to any part of the vein whose apex is without the lines,[104] but the same ruling would indicate ownership with full rights of all that part of the apex contained within the lines.

Where the apex crossed both side lines, the side lines become end lines and the end lines side lines and the vein becomes entitled to all its extralateral rights.[105]

PLACERS.

A placer claim[152] may be located on unappropriated government land[120] in quantities not exceeding 20 acres to each locator and one location not exceeding 160 acres[121] may be made by eight individuals. This latter

would be a single claim[122] requiring no more annual labor than the 20-acre allowance of each individual, which is $100 worth per year,[131] but a single person may locate as many separate 20-acre claims as he wishes if he can make a discovery on each.

While a location of such a tract can be made by an agent for the others whose names are subscribed, and makes his act their act without their knowledge,[190] the use of the names of nominal associates or dummies is not permissible, and such location is valid only to the extent of the 20 acres of the real locator,[127] so that if three persons made a location of 60 acres and it was shown to be for the benefit of one individual, it would be good only to the extent of a single 20-acre claim.[128]

The statutory requirements for placer-claim locations are that they shall be made by legal subdivisions in tracts of not less than ten acres in a square form, and that a five-acre rectangular tract will not be recognized.[142] These ten-acre tracts may be joined together so they may constitute the full 160-acre limit, but they must be contiguous.

An irregular 40-acre lot can not be subdivided in descriptive terms, but will require survey;[141] but a placer can be laid on subdivisions partly occupied by lode locations,[146] or even when they have been patented, by excluding the conflicting areas of such claims.[147]

Because a placer includes agricultural land it does not remove the necessity of the location being by legal subdivision, for if the claim is more valuable for placer than for agricultural purposes the placer will hold.[139]

On unsurveyed lands placers must be located in similar rectangular shapes and directions as on surveyed lands,[143] but will require survey before patent.

In the statute of 1870 the location of placers in conformity with the public-land surveys was made mandatory where such surveys had been made, but under the subsequent act of 1872 consideration was taken of claims such as could not be conformed to legal subdivisions. Such claims have since become known as gulch placers,[144] but the land-office definition is vague as to what constitutes them. The general test is that they be enclosed between high, precipitous banks.[145] It is probably best to locate by legal subdivisions at all times and thereby save trouble.

A placer location confers no right to veins known to exist within its boundaries at the time of entry for patent,[135] but its existence, to be excluded, must be known and clearly ascertained and of value sufficient for exploitation.[149] It is not sufficient that its presence was presumed,[150] but where a vein's presence was not known at the time of entry the patent protects it within the side lines of the claim.[138]

When a lode is known to exist in a placer claim it can only be located by the owner or with his consent,[136] as a prospector can not enter on

located placer land before entry,[151] but after that it may be located by any one,[148] as it is presumed that the title is still with the United States.[138]

Where the above condition of a known ledge exists it should be surveyed and incorporated in the application for patent and a strip twenty-five feet on either side of the lode line will be allowed at $5 per acre, or double the cost of placer ground.[137]

Until recently it was considered necessary to mark boundaries when located by legal subdivisions,[132] and this rule was followed[133] until the California court held that a location notice calling for a legal subdivision was sufficient, as the government survey distinctly marked the ground so it could be readily traced,[134] but until this question is finally settled the corners should be marked by stakes or posts.[123] This marking can be done by agents or employees,[124] and if the posts or other marks be destroyed or obliterated without the fault of the locator he can not be deprived of his rights on that account,[129] but as it might be a difficult matter to prove that the stakes were originally set, it would be well to keep them up.

The annual labor requirements are that $100 worth of work each year shall be placed on the claim. This does not mean that this sum shall be spent or contracted for, but that a reasonable valuation of the work done, considering the cost of labor, the distance of the mine from the nearest supply place, etc., was sufficient to represent this sum.[131]

No particular kind is prescribed, but any class of work such as digging prospect holes, cuts, or ditches, removing brush, or in fact any work that would tend to improve the claim as a mine will be sufficient.[136]

TUNNEL SITES.

Section 2323, Revised Statutes, gives the right to individuals, companies, and corporations, to run tunnels for the discovery of blind lodes or veins which do not show on the surface and protects the land from location after the commencement of the tunnel.[160] A striking characteristic of this section differing from all other mining law is that it gives to the diligent owner of a tunnel certain mining rights without a preliminary discovery, contingent only upon his location and diligent prosecution of the work.[167]

This gives no right, however, to blind lodes apexing within the vertical lines of a senior valid location.[164] In fact, there is no right of way to pass through such senior claim,[161] and care must be exercised in laying out its course that it may meet no such obstruction.[166]

The discovery of a vein within the tunnel gives the same rights as if discovered from the surface with the additional right that no boundaries

of the lode need be marked on the ground, the posting of a notice at the mouth of the tunnel giving the position of the discovery and the amount claimed on either side, and probably recording the same, being all that is necessary.[162]

But 1,500 feet can be taken of any vein discovered, but it may be taken in any proportion with relation to the tunnel line, all on either side or any portion of the 1,500 feet on one side and the remainder on the other.[163] As will be seen, this enlarges the grant of territory to a width of 3,000 feet. Possibly if a lode were encountered at the tunnel running in approximately the same course, an additional grant would be obtained, but as it is a question that has never been tested it is doubtful.

Where a lode location, in spite of the prohibition of the statute, is made on the surface subsequent to that of the tunnel and then a patent is obtained, it is not necessary that the tunnel owner object or adverse the application. This may be done later if a blind lode be discovered apexing within the side lines of the claim, for it is presumed that the tunnel's rights before the discovery are too intangible to maintain an action.[165]

In the location of a tunnel site there are no statutory requirements, but the Interior Department requires a good and sufficient notice giving names of locators, date of location, proposed course, height, and width, and a tie to some permanent well-known object in the vicinity, this notice to be prominently posted on a substantial post, monument, or board at the point of commencement; that a full and correct copy of this notice with the owner's affidavit attached setting forth the facts of the case, the amount expended, the work performed, and the intention to prosecute work with diligence be recorded.

In addition, at the same time the boundary lines shall be marked by stakes and monuments placed along such lines at proper intervals, and the lines so marked will define the boundaries.

Probably a single line run over the course of the tunnel would be sufficient to answer this requirement, but owing to the indefinite instructions it would be better to be doubly sure by marking exterior boundaries 1,500 feet on either side of the tunnel line, making an area 3,000 feet square bisected by the tunnel line.

MILLSITE.

A millsite may be located and patented on land that is non-mineral in character[180] if, for the benefit of a lode claim,[174] the nonmineral character of the land must be shown,[172] but the subsequent discovery of mineral on the ground will not void the title[181] after patent.

It is not necessary to do any work to hold or patent it; all that is required is that it shall be used or occupied for mining or milling purposes,[171] its use for a pumping plant[173] or dwelling houses for the workmen,[176] of a water supply[175] or tunnels to increase water flow, and house and stables,[183] cabins for storing tools and ore,[182] are held sufficient and a patent can be obtained for it at the same time as the lode claim if, at the time of entry, the millsite is being used or occupied.[178]

Even after the lode claim is patented, a millsite can be obtained and patented if sufficient improvements to show good faith are shown.[177]

But more than one millsite can not be obtained for a consolidated group without good and sufficient reasons be shown.[179]

A millsite for an independent quartz mill or reduction works can be located and patent obtained, subject to the same conditions as the other, but with the extra requirement that at the time of entry either the mill or reduction works are on the ground claimed.[170]

While necessary to mark boundaries and post corners if connected by survey with the lode claim to which it is appurtenant, it will not have to be connected with the corners of the public-land surveys.

AGENT.

A location of a mining claim may be made by an agent[191] who can perform all the necessary acts, such as making the discovery, marking the claim, etc.[199]

This location may be made in the absence of and without the knowledge of the principal,[190] who is presumed to assent to the same,[198] but after the location is made the locator can not divest the title from his principal.[192]

If the location had been made in his own name but at the expense of and for the benefit of another, the locator holds the title in trust for the other and acquires no rights to it but what the other person can divest him of,[197] but if made in the other's name he would acquire no record rights,[193] and if an agent made a relocation of the claim in his own name it would inure to his principal.[194]

An owner of a part interest in a mining claim is a cotenant with the other owners,[195] and if he relocates the claim when, on account of the annual assessment not being done the claim has lapsed, he becomes trustee for the others and the trust may be enforced in their favor,[196] so that if he should later patent the claim in his own name without their knowledge, the other coowners could enforce their rights.[197]

WATER.

By long established custom among miners of the West, the appropriator of water for mining purposes who first takes the necessary steps to subject the property to use is regarded as the source of title.[210]

The government silently acquiesced in the appropriation of its lands and water for mining purposes and by Congressional act of 1866 recognized it in granting rights of way for ditches, canals, and other purposes and, further; that whenever by priority of possession rights to the use of water for mining have vested and are recognized, the owners of such rights shall be protected in the same.[211]

This protection did not extend, however, to the extent of permitting a senior appropriator to fill a creek bed to the destruction of a junior locator further down.[209]

It seems to be the law between mills or reduction plants of whatever kind that the upper one may not permit the full volume of its tailings to wash down a creek bed to the serious injury of one below, but must so impound them that such injury shall be small, and the lower mill will have to stand the consequences of such slight damages as can not reasonably be prevented.[213]

It is true a prior appropriator of water has the right to have it flow to him without interruption or diminished in quantity,[207] but it was evidently the intention of the government to distribute this bounty among the greatest number and thereby rapidly develop the hidden resources, but at the same time preserve the substantial rights of individuals; therefore, if the damage is not too great it would probably be considered an injury without damage.

The prior appropriation gives a vested right to water and all subsequent titles are subservient thereto.[201] The rights of a homestead claimant would be subject to this prior one,[222] but it would be prior to a still subsequent appropriation and would prevent further diversion.[203]

An appropriation of water for a specific use and for a specified place may not change the place of use to the damage of a subsequent appropriator lower down.[206]

ALIENS.

The provisions of the Revised Statutes relating to the rights of citizens and those who have declared their intention to become such in the appropriation of the public mineral lands include both sexes,[229] and as no age qualification is prescribed, will likewise include minors as well.

Service in the army of the United States gives an alien the standing of one who has declared his intention to become a citizen.[222]

An American corporation is a citizen[230] when its stockholders have this qualification[227] and it is conclusively presumed that they have,[225] and as a citizen the corporation has, the full right of appropriation and operation of mining claims.[227]

An alien locator can not be ousted by a later claimant who is a citizen on the ground that the alien is not a citizen.[228] It is true his location is voidable, but he is free from attack by any one except the government.[226] This, however, relates wholly to his possessory title, as he can not obtain a patent until he has made the necessary declaration of citizenship, but he may do this at any period of the proceedings against him and his disability will be removed.[224]

An alien can receive a title from a qualified locator and be protected in his possession from all except the government,[223] and he can pass this title in the meantime to another.[221]

Should one qualified to locate claims have as a colocator an alien, it will in no way affect the rights of the former.[220]

UNITED STATES MINERAL SURVEYOR.

While, under the act of May 10, 1872, all mineral lands were thrown open to occupation and purchase by citizens of the United States, a later reservation was made by Congress prohibiting on the ground of public policy any officer, clerk, or employee of the general land office acquiring, either directly or indirectly, any of the public lands of the government.[231]

This prohibition extends to the Surveyor General,[238] and his mineral deputies,[236] officers, clerks, and employees[240] who are held to be connected with the general land office within the meaning of the statute,[235] and they are disqualified to enter public lands[234] or become interested in the entry of the same,[233] or to buy or sell any negotiable right under which any interest in the public lands may be asserted.[241]

The department goes even further than this and prohibits under penalty of dismissal the acquisition of any of the public lands, either directly or indirectly, by their wives.[241]

The Supreme Court of Utah decided that a deputy United States mineral surveyor came under the statute and that a location of mineral land made by him was void.[232] On appeal to the United States Supreme Court this point was unfortunately not touched upon, the merits of the case passing off on other grounds.

In the performance of an official survey the deputy is not acting as an agent, attorney, or employee of the applicant, but as an official of the General Land Office,[237] and is prohibited from making the official survey of a mining claim the property of an individual or corporation by whom he is under permanent engagement as manager, engineer, superintendent, or otherwise.[242]

SYLLABI OF LEADING DECISIONS

DISCOVERY.

No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. 1

Enterprise M. Co. *v.* Rico Aspen M. Co., 167 U. S. 108.

There can be no valid location of a mining claim without an actual mineral discovery. 2

Tuolumne Con. Mg. Co. *v.* Maier, 134 Cal. 583.

The statute was intended to apply to any kind of a vein or lode of quartz or other rock in place, bearing mineral, in whatever kind, character, or formation the mineral might be found. 3

The statutes should be so construed as to protect locators of mining claims who have discovered rock in place bearing any of the precious metals named therein in sufficient quantities to induce them to expend their time and money in prospecting and developing the ground located.

When the locator finds the rock in place, he has made a discovery within the meaning of the statute, whether the rock or earth is rich or poor, whether it assays high or low.

It is the finding of the mineral in the rock in place as distinguished from float rock that constitutes the discovery and warrants the location of a mining claim to be made.

Book *v.* Justice Co., C. C. Dist. Nev.

Rock in place as used in the mining statutes means rock that is enclosed in the general mass of the mountain as distinguished from float soil and debris of the surface, and it is not material where the rock or mineral was originally formed or deposited or that the vein matter is loose or broken or disintegrated. 4

Jones *v.* Prospect Tunnel Co., 21 Nev. 339.

Mere indications, however strong, are not sufficient to answer the requirements of the statute, which requires as one of the essential conditions to the making of a valid location of unappropriated public land of the United States under the mining laws a discovery of mineral within the limits of the claim. Indications of the existence of a thing is not the thing itself. 5

Nevada Sierra Oil Co. *v.* Home Oil Co., C. C. S. D. Cal. 1899.

There must be something beyond a mere guess on the part of the miner to authorize him to make a location that would exclude others from the ground, such as the discovery of the presence of the precious metals in it, or in such proximity to it as to justify a reasonable belief in its existence. 6

Erhardt *v.* Boaro, 113 U. S. 527.

The law will not distinguish between the different classes and kinds of ore, if they have appreciable value of the metal for which the location was made. Nor is it necessary for the ores to be of economical value for treatment. 7

Stevens *v.* Williams, U. S. C. C. Colorado.

A location based on a discovery of mineral made within the limits of another valid and existing location is void. 8

Tuolumne Con. Mg. Co. *v.* Maier, 134 Cal. 583.

A mere posting of a notice on a ridge of rocks cropping out of the earth, or on the ground, that the poster has located thereon a mining claim, without any discovery or knowledge on his part of the existence of metal there, or in its immediate vicinity, would be justly treated as a mere speculative proceeding, and would not itself initiate any right. 9

Erhardt *v.* Boaro, 113 U. S. 527.

A discovery disclosing, and the lines of the claim including, any part of the width or apex of the vein is sufficient upon the point of legal disclosure of the vein within the limits of the claim. 10

Larkin *v.* Upton, 144 U. S. 19.

Need not be first discoverer.—The locator of a mining claim is not required to be the original discoverer of the vein or lode if, at the time of making the location, there is a discovery of a vein or lode of quartz or other rock in place, and knowledge on the part of the locator of mineral there; the locator is entitled to make his location, even though the discovery was first made by some one other than the locator. 11

Hays *v.* Lavignini, 17 Utah 185.

The order of time in which these several acts are performed is not of the essence of the requirements, and it is immaterial that the discovery was made subsequent to the completion of the acts of location, provided only all the necessary acts are done before intervening rights of third parties accrue. 12

Brewster *v.* Shoemaker, 28 Colo. 176.

A location of a mining claim made without discovery is not entitled to the legal protection of an injunction except to the extent of the *pedis possessio* that is the claimant's actual workings. 13

Competing prospectors can not make use of the writ of injunction to secure priority of discovery or location on, or apparent superiority of right to a mining claim.

Gemmel *v.* Swain, 28 Montana 331.

Mineral lands within national forests may be freely prospected, located, developed, and opened in accordance with the mining laws and national forest regulations. 14

Interior Department ruling.

LOCATION AND RECORD.

Abandonment is a question of intention; and a second location within the lines of a previous location is not an abandonment of the first. 20

Weill *v.* Lucerne Co., 11 Nev. 200.

Errors and mistakes in certificates of location are of frequent occurrence. * * * Of course it is often and, perhaps, generally impracticable to obtain the services of a surveyor in making a location, and a miner must depend upon his own skill and judgment. In such effort he usually fails. Indeed, it may be said as to the course of his lines he is always in error; and the natural object and permanent monument required by Sec. 2324 of the Revised Statutes are entirely beyond his grasp. He does not know what they are or how to refer to them. Every one who is at all familiar with mining locations knows that the first record must usually, if not always, be imperfect. Recognizing these difficulties, it has never been the policy of the law to void a location for defects in the record, but rather to give the locator an opportunity to correct his record whenever defects may be found in it. 21

McEvoy *v.* Hyman, 25 Fed. 596.

A location certificate whose only call for natural objects or permanent monuments as required by the act were the words "about fifteen hundred feet south of Vaughn's Little Jennie Mine." Held, to contain a sufficiently definite description. 22

The provision of the Revised Statutes that records of mining claims shall contain such reference to some natural object or permanent monument as will identify the claim means only that this is to be done when such reference can be made; and when it can not be so made, stakes driven in the ground are sufficient for 23

identification, or a reference to a neighboring mine with distance and date of location, which will be presumed to be a well-known natural object in the absence of contradictory proof.

Hammer *v.* Garfield M. Co., 130 U. S. 291.

Where a locator of a mining claim on government land fraudulently antedates his notice of location for the purpose of defeating an actual locator thereon, such location is fraudulent as against such rightful claimant and is fraudulent against the government. 24

Muldoon *v.* Brown, 21 Utah 121.

A description in the location certificate of a mining claim that the mine is located in a certain section on top of the mountain south of Dew Drop Gulch is sufficient, since such gulch is a natural object or permanent monument. 25

Duncan *v.* Fulton, 61 Pac. 244.

A locator may swing his claim at will where no conflicting location has intervened. 26

Duncan *v.* Fulton, 61 Pac. 244.

Notices of location of mining claims are to be liberally construed and are not invalid because of mistakes therein as to courses and distances. 27

Walton *v.* Wild Goose, 123 Fed. 209.

Certificates of location are not conclusive proof of the facts which they recite against those asserting rights adverse to their makers. They are competent evidence of the fact that they were made and filed, and hence of an important link in the chain of the plaintiff's title. When the existence of the facts which they recite is challenged they are but the *ex-parte* statements of interested parties, and there is nothing in them or in their relation to the property of the parties to bind those claiming the lands adversely to the makers or to estop them from establishing the truth by the customary oral and written evidence. 28

Uinta Tunnel Co. *v.* Creede, 196 U. S. 337.

Location Without Posting Notice.—The mining laws of the United States do not require any written notice to be posted upon the location when made, and, in the absence of any local rule or regulation or State law requiring a notice to be posted, the location, the boundaries of which are properly marked upon the ground, is valid without the posting of any notice. 29

But where the statutes of any State, or local rules and regulations of miners require notice to be posted upon the ground at the time the location is made, the construction given to the notices should be liberal, not technical.

Positive exactness as to the course is not required. The stakes and monuments referred to in the notice, and posted upon the ground, will control the direction stated in the notice.

Book *v.* Justice, 58 Fed. 106.

A miner's posted notice is to be liberally construed. 30

Talmadge *v.* St. John, 129 Cal. 430.

A notice of location of a mining claim which, by reference to natural objects and monuments erected by the locator, contains directions which, taken in connection with such objects, would enable a person of ordinary intelligence to find the claim and trace its boundaries, is sufficient. 31

Bramlett *v.* Flick, 23 Montana 95.

No notice of location is required by the statute, but when the same is posted on the ground it may be considered as a marking to aid in tracing the boundaries of the location. 32

Meydenbauer *v.* Stevens, 78 Fed. 787.

When a notice of location contains a description of the claim, and is recorded, it operates as constructive notice that the locator claims the ground described. 33

Id.

The description of the location as shown by the record ordinarily will bind the locator as to the locus of the claim. 34

Id.

But where the distances and courses set out in the description as recorded vary from the monuments or markings made on the ground, the latter prevail and will determine the locus of the claim. 35

Id.

The statute does not require any record of location, but when one is made it prescribes what the same shall contain, viz., the name of the locator, the date of the location, and such a description of the claim by proper references as will identify the claim. 36

Id.

The principal object of the record is the identification of the claim; and if, considering everything it contains, the name of the locator, the date of the location, and the description by reference to some natural object or permanent monument, the claim can be identified, the record is sufficient. 37

Id.

A record is not required by the congressional act, but if required by state law or district rule, must contain a sufficient description, and from the nature of their respective offices the posted notice is not supposed to be as specific as the record or location certificate. 38

Gird *v.* California Oil Co., 60 Fed. 531.

The law of Congress requires no record of a mining claim except in obedience to valid local rules or customs of miners; but when such local rules or customs require a record it must contain the names of the locators, the date of the location, and such a description of the claim, by reference to some natural object or permanent monument, as will identify the claim. But such natural object or permanent monuments are not required to be on the ground, although they may be; and a natural object may consist of any fixed natural object, and such permanent monument may consist of a prominent post or stake firmly planted in the ground or of a shaft sunk in the ground. If, by reference to any such natural object or permanent monument, the claim recorded can be identified with reasonable certainty, the record will be sufficient in this particular, otherwise not. 39

Jupiter M. Co. *v.* Bodie Con. M. Co., 11 Fed. 666.

Whether the record calls were sufficient to identify the claim submitted as a question of fact for the jury. 40

North Noonday *v.* Orient Co., 1 Fed. 522.

Besides the change of names, the location certificate as recorded in the district record contained for the course of the lode the words westerly and easterly. They were changed to northerly and southerly, but without any fraudulent intent. Held, that the changes were immaterial, were no proof of abandonment of the original location, and that the facts of the case did not present any question of estoppel. 41

Gleeson *v.* Martin White Co., 13 Nev. 442.

The purpose of this additional amended certificate appears to be sufficiently expressed by the language of the act. It can not create a right of possession or location in the premises claimed under the first location, which did not appear prior to the filing of such additional certificate; it can confer no additional right and is therefore evidence of none, as against any intervening or pre-existing right of another. It follows that, except as against such intervening rights, an additional certificate serves the same purpose, in its admission as evidence as that of an original location certificate, and will relate back to the first location. The evident intent of the statute is that the additional certificate shall operate to cure defects in the original, and thereby to put the locator, where no other rights have intervened, in the same position that he would have occupied if no such defect had occurred. 42

End lines must be straight. It is the end lines alone which define the extralateral rights, and they must be straight lines, not broken or curved lines, and to such the right on the vein below is strictly confined. 50

Walrath *v.* Champion, 171 U. S. 293.

Overlapping locations are of constant occurrence, recognized by land-office practice, and impossible to be avoided under the mineral-land laws. On such state of facts the nominal trespass of placing stakes on older claims will not be held to vitiate the claim, notwithstanding the rights of the older locator to the exclusive possession of his surface ground. 51

Del Monte M. and M. Co. *v.* Last Chance, 171 U. S. 55.

Setting Stakes on and Protracting Lines Across Prior Claims.—Lines of a junior lode location may be laid within, upon, or across the surface of a valid senior location for the purpose of defining for or securing to such junior location underground extralateral rights not in conflict with any rights of the senior location. 52

Id.

Protracted End Lines.—An end starting on clear ground, which is cut off as a surface boundary by reaching ground on an older patent but protracted across or upon such patent to find a corner, continues to be an end line, and is to be protracted on its downward course to define the extralateral right of a lode claimant following a vein on its dip. 53

Id.

Where the course of a vein is across a mining claim as located upon the surface instead of lengthwise, the side lines of the location become the end lines, and the end lines side lines, so far as lateral rights are concerned, but this does not impair the validity of a patent as to any part of the territory included therein. 54

Argonaut Con. *v.* Turner, 23 Col. 400.

Right to Draw in End Line.—When the outcrop of a vein passes through one end line and one side line of a location, the locator may draw in the other end line to the point of the intersection of the vein with the side line, and abandon what lies beyond; and he will then have the same extralateral rights as if the claim had been located in the first instance. Even if the locator does not actually so draw in his end line and abandon what lies beyond, a new end line will be considered as drawn at that point, and the claim will have the same extralateral rights as if it had been so located in the first instance. 55

Tyler M. Co. *v.* Last Chance, 71 Fed. 848.

Courses and distances under the authorities are assigned the lowest place in the scale of evidences, as being the least reliable. 56

Cullacott *v.* Cash Gold M. Co., 8 Col. 179.

Monuments Control Courses and Instances.—The courses and distances of a survey must yield to its monuments, whether natural or artificial. 57

Pollard *v.* Shively, 5 Colo. 309.

Where the discovery vein leaves the claim through a side line which fixes the limit of its extralateral rights to such discovery vein, but a secondary vein is found having an apex going through both side lines, such secondary vein has extralateral rights between the two points at which it leaves the side lines. 58

The end lines of a discovery vein are not necessarily the end lines of a secondary vein; the extralateral rights of such secondary vein may extend beyond them.

Ajax Gold M. Co. *v.* Hilkey, 31 Colo. 131.

When a location has been made upon a vein across instead of along the strike of the vein discovered, the side lines become the end lines. Such claim has no extralateral rights, and the later finding of another vein having a course parallel to the side line does not aid the contention to pass such side lines. 59

Cosmopolitan M. Co. *v.* Foote, 101 Fed. 518.

Where the end lines of a mining claim have been established, they remain the end lines as to all veins found within its surface boundaries. 60

St. Louis M. and M. Co. *v.* Montana M. Co., 104 Fed. 664.

A vein can not be followed beyond the adopted side lines. 61

Golden Fleece M. Co. *v.* Cable Con. M. Co., 12 Nev. 312.

Only those veins can be followed on the dip whose apexes are within the surface lines and within the area found by extending down vertical planes through end lines which must be parallel. 62

Iron Silver M. Co. *v.* Elgin M. Co., 118 U. S. 196.

When a claim is located in the form of an isosceles triangle the locators can not follow down their vein on its dip beyond the exterior lines of the location. Parallelism in end lines is essential to the exercise of such right. 63

Montana Co. *v.* Clark, 42 Fed. 626.

64 Under the rule that where a lode mining claim is located across instead of along the vein, the original side lines become end lines, and the end lines side lines, the owner is entitled to all the rights with reference to the new side lines that he would have had if they had originally been located as such, including the right to follow the dip of the vein having its apex within the surface boundaries of his claim, beyond the vertical plane passing through such lines.

Empire M. and M. Co. *v.* Tombstone M. Co., 131 Fed. 339.

Strepey *v.* Stark, 7 Colo. 614.

65 As the law stands, we think that the right to follow the dip of the vein is bounded by the end lines of the claim properly so called, which lines are those which are crosswise of the general course of the vein on the surface. But our laws have attempted to establish a rule by which each claim shall be so many feet of the vein lengthwise of its course to any depth below the surface, although laterally its inclination shall carry it ever so far from a perpendicular.

Flagstaff S. M. Co. *v.* Tarbet, 98 U. S. 463.

66 Revised Statute 2342, which provides that in marking a mining claim the location must be distinctly marked on the ground so that its boundaries can be readily traced does not require the boundary lines to be indicated by physical marks and monuments nor define what kind of marks shall be made, nor on what part of the ground claimed; but any marking, whether by stakes, mounds, monuments, or written notices, whereby the boundaries can be readily traced, is sufficient.

Oregon King M. Co. *v.* Brown, 119 Fed. 48.

ANNUAL LABOR.

70 The object of Section 2 of the Act of Congress of January 22, 1880, amending Section 2324, was to make a uniform period for the annual work on all claims located since May 10, 1872, and fixed the first of January next succeeding the date of the location as the time of its commencement.

Slavonian M. Co. *v.* Perasich. U. S. C. C. Nev.

71 A locator's only right to the possession of a mining claim is conditional upon the performance annually of the required amount of labor, and if such labor is not performed the ground is subject to relocation.

Du Prat *v.* James, 65 Cal. 555.

A forfeiture of a mining claim can not be established except upon clear and convincing proof of the failure of the former owner to have the work performed or improvements made to the amount required by law. 72

Hammer *v.* Milling Co., 130 U. S. 291.

In all legislation, whether of Congress or of the State or Territory, and by all mining regulations and rules, development by working is the condition of continued ownership until a patent is obtained. 73

Erhardt *v.* Boaro, 113 U. S. 535.

Although the owner of a claim has failed to do the necessary assessment work, so that the ground is subject to relocation, yet if, before any such relocation by others, he performs the amount of assessment work required by the statute, then his rights are revived and the subsequent location is invalid. 74

Justice M. Co. *v.* Barclay, 82 Fed. 554.

The law fixes no time within the year when the work must be done, consequently if done at any time during the year it is enough. 75

Belk *v.* Meagher, 104 U. S. 283.

Mining claims are not open to relocation until the rights of the former locator have come to an end. No relocator of a mining claim can avail himself of the mineral in the public land which another has discovered until the prior locator has in fact abandoned the ground, or under the provisions of the mining law forfeited his right thereto. 76

Book *v.* Justice, C. C. Dist. Nev.

Facts Amounting to Resumption.—The owner of the original location came on the ground December 30, worked the claim December 31. January 1 was Sunday; but on the second he worked, and so continuously until one hundred dollars' worth of work had been performed. 77

The relocation was initiated Sunday morning (after midnight of the 31st). Held, a valid resumption of labor and that the relocation was void. The fact that the first day of January fell on a Sunday considered with the holding that the resumer is not bound to work on Sunday.

Emerson *v.* McWhorter, 133 Cal. 510.

Where the miner has claimed the statutory privilege of resuming work after neglect, but before relocation by another, he must prosecute the same with reasonable diligence and complete the full requirement. 78

Honaker v. Martin, 11 Montana 91.

A claimant who has failed to perform the work for some years, but resumes work in good faith, is entitled to the property as against a relocator after resumption. 79

Buffalo Zinc Co. *v.* Crump, 70 Ark. 525.

The provisions of the Revised Statutes authorizing the necessary work to be done on any one of the several claims held in common applies only where such claims are contiguous. 80

Royston *v.* Miller, C. C. Dist. Nev.

Assessment work done on one of several adjoining claims may count for all, but in such cases it must be for the benefit of all the claims to be protected. Work done on a patented claim under the above conditions is available to protect the possessory claims. 81
to work on Sunday.

Justice M. Co. *v.* Barclay. C. C. Dist. Nev.

Work on a claim is work done anywhere upon the surface of it, within its surface lines, or anywhere below the surface within the lines, extending downward vertically, and though it should be shown that the work done within the lines below the surface was also within a lode having its apex outside of such vertical lines, it would still be work on the claim within the meaning of Section 2324. 82

Mt. Diablo *v.* Callison, U. S. C. C. Nev.

Work done outside of a claim for the purpose of prospecting or developing it is as available for holding the claim as if done within the boundaries of the claim itself. 83

Mt. Diablo *v.* Callison, U. S. C. C. Nev.

Whether work done on one of a group of claims was for the benefit of the claims in controversy is a question of fact for the jury. 84

Altoona *v.* Integral, 114 Cal. 100.

In determining the amount of work done upon a claim or improvements put thereon for the purpose of representation, the test is as to the reasonable value of the said work or improvements, not what was paid for it, or what the contract price was, but it depends entirely upon whether or not the said work or improvements were reasonably worth the sum of $100. 85

Mattingly *v.* Lewisohn, 13 Montana 508.

The amount of annual labor may by district rule be made to exceed $100, but the rule can not, under the act of Congress, decrease the amount below $100. 86

Northmore *v.* Simmons, 97 Fed. 386.

87 Work may be required by district rule during the location year.

Northmore *v.* Simmons, 97 Fed. 386.

88 The filing of an application for patent does not suspend the obligation to keep up the required annual work where, without paying the purchase price, the claimant permits his application to sleep for years, and upon such failure to comply with the conditions, the claim is open to relocation in the same manner as if no location had ever been made.

Gillis *v.* Downey, 83 Fed. 483.

89 A district rule fixing so many feet of sinking as full assessment work is not binding to allow of less expenditure than the act of Congress requires, but is evidence tending to show what the miners considered to be the value of labor in that locality.

Wright *v.* Killian, 132 Cal. 56.

APEX.

90 The top or apex is the end or edge or terminal point of the lode nearest the surface of the earth. If found at whatever depth and the locator can define on the surface the area which will enclose it the lode may be held under such location.

Iron Silver Co. *v.* Murphy, 3 Fed. 368.

91 Apex is the highest point where it approaches nearest the surface of the earth and where it is broken on its ends so as to appear to be the beginning or the ending of the vein. If the vein at its highest point turns over and pursues its course downward such point is not a true apex.

Stevens *v.* Williams, U. S. C. C. Colorado.

92 An apex of a vein is not necessarily a point, but often a line of great length. Any portion of the apex on the course or strike of the vein found within the limits of a claim is sufficient discovery to entitle the locator to obtain title, for while the owner of a vein may follow it in its descent into another's territory beyond his own side lines he can not beyond his end lines, and the vein beyond these end lines is subject to further discovery and appropriation.

Larkin *v.* Upton, 144 U. S. 19.

93 A vein dipping at any angle between the vertical and horizontal position downward has a departure from the perpendicular within the meaning of Section 2322.

Leadville M. Co. *v.* Fitzgerald, U. S. C. C. Colo.

Where the discovery of mineral is made underground on the dip of the vein it is presumed in the absence of a showing to the contrary that the vein extends upwards at the same angle. 94

Brewster *v.* Shoemaker, 28 Colo. 176.

But no location can be made on the middle part of a lode or otherwise than at the top or apex which will enable the locator to go beyond his lines. 95

Iron Silver Co. *v.* Murphy, 3 Fed. 368.

The burden of proof of the existence of an apex within his side lines rests on the party asserting extralateral rights. 96

Carson City Co. *v.* North Star Co., 83 Fed. 658.

A locator can not take mineral from the claim of another without showing by a preponderance of evidence that it is a part of the vein having its apex in his own claim. 97

Cons. Wyoming Co. *v.* Champion Co., 63 Fed. 540.

Where the defendants are working within their vertical lines the burden of proof is on the party alleging that he has an apex entitling him to follow the vein into defendant's ground. 98

Maloney *v.* King, 64 Pacific 351.

Where two veins unite on the dip, the oldest location holds the vein below the plane of the union. 99

Cons. Wyoming Co. *v.* Champion Co., 63 Fed. 540.

If the deposits of ore are irregular along the line of a contact of porphyry and limestone, a lode does not exist if the contact is barren of mineral or ore for any considerable distance. 100

Stevens *v.* Williams, U. S. C. C. Colo.

The fact that the apex of a vein on its strike passes through one end line and one side line of the location does not cause both these lines to be regarded as end lines so as to destroy the parallelism, without which there is no right to follow the dip laterally beyond the boundaries of the claim. On the contrary, the owner of such a claim will have the right to follow the dip, within his original end lines, so far as he holds the outcrop within his location. 101

Del Monte M. and M. Co. *v.* New York, 66 Fed. 212.

When the outcrop of a vein passes through one end line and one side line of a location, the locator may draw in the other end line to the point of intersection of the vein with the other side line and abandon what lies beyond; and he will then have the same extra- 102

lateral rights as if the claim had been so located in the first instance.

Even if the locator does not actually so draw in his end lines and abandon what lies beyond, a new end line will be considered as drawn at that point, and the claim will have the extralateral rights as if it had been so located in the first instance.

Tyler M. Co. *v.* Last Chance M. Co., 71 Fed. 848.

103 Where the vein crosses one side line and departs at one end line the extralateral rights are bounded by the vertical plane of such end line and a parallel plane extended downward at the point where the apex leaves the side line.

Parrot Silver and C. Co. *v.* Heinze, 64 Pac. 326.

104 If the apex of a vein, or part of it, enters the end line of a claim, and then passes out through a side line, but curves back again into the claim and crosses its other end line, this gives the owners of the claim no right to any part of the apex which is outside of their lines.

Waterloo *v.* Doe, 82 Fed. 45.

105 Under the rule that where a lode mining claim is located across instead of along the vein the original side lines become end lines, and the end lines side lines, the owner is entitled to all the rights with reference to the new side lines that he would have had if they had originally been located as such, including the right to follow the dip of a vein having its apex within the surface boundaries of his claim, beyond the vertical plane passing through such lines.

Empire M. and M. Co. *v.* Tombstone M. Co., 131 Fed. 339.

106 No Extralateral Rights to Blanket Veins.—Held, that where the dip was upward and not downward, no justification was shown to extend its works and extract ore beyond its own lines.

Gilpin *v.* Sierra Nevada M. Co., 2 Idaho 662.

107 The presumption of ownership is that the locator or patentee holds everything within his vertical lines until a preponderance of evidence shows an exterior apex under conditions allowing it to invade the ground between such vertical lines.

Duggan *v.* Davey, 4 Dakota 110.

108 The definition of the top or apex of a vein usually given is the end or edge of a vein nearest the surface. It is, indeed, difficult to see how any serious question could have arisen as to the practical meaning of the terms top or apex, but it seems in fact to have become somewhat clouded. I apprehend if any intelligent person were to point out the top or apex of a house, a spire, a tree, a hill,

he would have no difficulty in doing so, and I do not see why the same common sense should not be applied to a vein or lode.

Duggan *v.* Davey, 4 Dak. 110.

109 The title to portions of a horizontal vein or deposit, generally called a blanket vein, may be acquired under the sections of the Revised Statutes concerning veins, lodes, etc.

Iron S. M. Co. *v.* Mike and Starr M. Co., 143 U. S. 394.

110 The law goes upon the hypothesis that all veins are more or less vertical in the earth.

Iron S. M. Co. *v.* Murphy, 3 Fed. 368.

111 If a location is made upon the top or apex of a vein the law gives the miner the whole of the vein wherever it may go; he may follow it to any depth, although in its downward course it may enter the land adjoining.

Iron S. M. Co. *v.* Murphy, 3 Fed. 368.

112 The top or apex is the highest end or termination of a vein, and this is so even though at any intermediate point or points where the vein is continuous it rises higher than such highest end, it being essential to such top or apex that there be no vein continuing beyond it. It must be the end of the vein which approaches nearest to the surface.

Stevens *v.* Williams, U. S. C. C. Colo.

113 That where the dip was upward and not downward, no justification was shown to extend its works and extract ore beyond its own lines.

Gilpin *v.* Sierra Nevada M. Co., 2 Idaho 662.

115 Under the provisions of the statute giving to the locators of claims theretofore located any additional veins, lodes, or ledges existing therein, the end lines of the claim, for the purpose of determining extralateral rights in such additional veins, were the end lines of the original location and lode, and were not to be determined irrespective thereof by the direction of the newly discovered lodes.

Walrath *v.* Champion M. Co., 171 U. S. 293.

116 Where a cropping on the west side of a hill inclined upwards from south to north at an angle of 3 deg. 26 min. and the outcrop of the same ledge of the north face of the hill was 8 deg. downward to the east, the northern exposure of the edge of the vein was on the line of its dip and not an apex as to allow a claim on its outcrop to follow the vein on its dip.

Duggan *v.* Davey, 4 Dakota 110.

117 The servitude imposed upon the senior locator of a mining claim by United States Revised Statutes 2336, by giving the right of way to the junior location, whether that extends only through the space of intersection of the veins or through the space of intersection of the claims, does not otherwise affect the exclusive rights given the senior location, or except therefrom the cross veins apexing therein.

Calhoun Gold M. Co. *v.* Ajax Gold M. Co., 182 U. S. 499.

118 The ore within the space of intersection means a body of ore bounded by the two walls of the one lode and the two walls on the intersecting lode—such ore belongs to the prior locator, a right of way through it to the junior locator.

Watervale M. Co. *v.* Leach, 33 Pac. 418.

PLACERS.

120 The right of possession of a placer-mining claim must be based on a valid location thereof in conformity with the laws of the United States and the requisites of a valid location of placer-mining claims are:

The ground sought to be located must be vacant unappropriated land belonging to the Government of the United States.

The location must be marked on the ground so that its boundaries can be readily traced.

And the discovery of mineral on the ground.

Walton *v.* Wild Goose Co., 123 Fed. 209.

121 The area of a placer location is limited to twenty acres to each locator, but a number of individuals may locate in common not to exceed one hundred and sixty acres in any one claim.

Kirk *v.* Meldrum, 28 Colo. 453.

122 A location of one hundred and sixty acres by eight persons is but a single claim.

Miller *v.* Chrisman, 140 Cal. 140.

123 Any markings on the ground claimed by stakes and monuments and written notices whereby the boundaries of the claim located can be readily traced is sufficient.

Walton *v.* Wild Goose Co., 123 Fed. 209.

124 It is not necessary that the marking of the location on the ground be done by the locator in person; such marking may be done by the agents and employees of the locator as well as by the locator

himself. Nor is it necessary that the discovery of gold be made by the locator in person; a discovery of gold made by any agent or employee of the locator or by any person acting in his behalf and for his benefit and if made before any intervening rights attach will be just as valid as if made by the locator in person. 125

Id.

It is not necessary that the acts requisite to perfect a mineral location be performed in any particular order; it is sufficient if they are all performed before any subsequent location is made. 126

Id.

The use of the names of nominal associates so as to take up one hundred and sixty instead of twenty acres of placer ground is not permissible, and such location is valid only to the extent of the twenty acres of the real party. 127

Durant *v.* Vorbin, 94 Fed. 382.

Three persons operating in the interest of one are limited to a single twenty acres. 128

Gird *v.* Cal. Oil Co., 60 Fed. 531.

When a valid location of a mining claim is once made it vests in a locator and his successors in interest the right of possession thereto, which right can not be divested by the obliteration or removal without the fault of the locator or his successors in interest of the stakes and monuments marking the boundaries, or the obliteration or removal from the claim of the location notice posted thereon. 129

Walton *v.* Wild Goose Co., 123 Fed. 209.

The law does not prescribe the particular kind of labor which is to be performed, nor in what it shall consist, nor the manner in which it shall be performed. Nor does the law require that it shall benefit the claim in the sense of making the claim more valuable after the performance of the labor than before. 130

Any labor performed upon the claim, if sufficient in amount, will satisfy the law if its tendency is to develop the claim as a mine. The digging of prospect holes, or the digging of a cut or cuts or drain ditch or ditches, the removal of brush, panning, etc., and all things done necessary for the doing of assessment work, if sufficient in amount will be compliance with the law.

Work done for the purpose of discovering mineral, whatever the particular form of the deposit, is also work and improvement within the meaning of the statute.

Id.

131 The law required $100 worth of work done upon a claim for the purpose of representation, and the test is as to the reasonable value of said work, not what was paid for it or what the contract price was. But it depends entirely upon whether or not the said work was reasonably worth the sum of $100.

In estimating the value of labor performed there should be considered the distance of the mine from the nearest point where labor could be procured, the cost of maintaining men while the labor was being performed, the current rates of wages, and any other necessary and reasonable expense which would reasonably and necessarily be incurred in the performance of the said labor.

Id.

132 A location of a placer claim on a government subdivision requires staking the corners of the same, as on unsurveyed land.

White *v.* Lee, 78 Cal. 593.

133 A placer location upon a legal subdivision must be staked the same as if upon unsurveyed land.

Worthen *v.* Sidway, 72 Ark. 215.

134 It is not necessary to stake corners in a legal subdivision location. Where the notice of location calls for a legal subdivision, it is a sufficient notice of its boundaries and the location is distinctly marked on the ground by the government survey so that its boundaries can be readily traced, there need be no other marking of the boundaries.

Kern Co. *v.* Crawford, 143 Cal. 298.

135 A placer location gives a qualified possession of the ground located; that is to say, it confers upon the owner the exclusive right of possession of the surface area for all purposes incident to the use and operation of the same as a placer-mining claim and all unknown lodes or veins, but does not give the right of possession to known lodes or veins within its limits. The right to the possession of such lodes or veins can be acquired only by locating them as lode claims.

Mt. Rosa M. Co. v. Palmer, 26 Colo. 56.

136 The owner of an unpatented claim, or another with his consent, can locate a lode claim within the boundaries of a placer claim.

McCarthy *v.* Speed, 77 N. W. 590.

137 Section 2333, fixing the width of a lode claim within the boundaries of a placer claim at twenty-five feet on each side of the vein, applies not only when the lode is located by the placer claimant, but applies as well to others who locate a lode within the boundaries of a previously located placer.

The Mt. Rosa M. Co. *v.* Palmer, 26 Colo. 56.

Where the claimant is in possession of a vein or lode included within the boundaries of his placer claim, the patent shall cover both if he makes this known and pays $5 per acre for twenty-five feet on each side of his vein and $2.50 per acre for the remainder of his placer claim. 138

But where no such known vein or lode is known to exist, the patent for a placer claim shall carry all such veins or lodes within the boundaries which may be afterwards found to exist under the surface, but where a vein is known to exist under the surface included in such patent, and is in the claimant's possession and not mentioned in the claim on which the patent issues, the title to such vein or lode remains in the United States and does not pass to the patentee, who thereby acquires no interest in such vein or lode.

Reynolds *v.* Iron Silver M. Co., 116 U. S. 687.

The fact that a placer-mining location if made to conform as nearly as practicable to the system of public-land surveys and the rectangular subdivisions of such surveys as required by Section 2331 of the Revised Statutes would embrace small portions of land not valuable for placer mining, constitutes no reason for failure to conform the location to such system and legal subdivision, where, if so conformed, the land embraced in the location would be as a whole more valuable for placer mining than for agricultural purposes. 139

Hogan Placer M. Claim, 34 L. D. 42.

Where the certificate of entry of a placer-mining claim describes the land in terms of the general public (official) survey of excluded mining claims, such description is sufficiently accurate therein and said surveys taken altogether furnish the necessary data for the computation of the area of the land and for the preparation of an accurate description to be incorporated in the patent. 140

Mary Darling Placer M. Claim, 32 L. D. 64.

A portion of an irregular legal subdivision is not sufficiently identified to enable the department to accurately describe the same in a patent by an attempted description thereof in terms of the public-land surveys, and where patent is sought to a placer-mining claim embracing a portion or an irregular legal subdivision or lot, an official survey of the particular portion claimed will be required. 141

Chicago Placer M. Claim, 34 L. D. 9.

The smallest legal subdivision of the public surveys provided for by the mining laws is a subdivision of ten acres in square form; and such laws do not contemplate that in the location and entry of placer-mining claims rectangular tracts of five acres may be recognized and treated as legal subdivisions. 142

Roman Placer M. Claim, 24 L. D. 260.

A placer-mining claim upon unsurveyed public land, to be valid, must be located upon the ground in such shape and position as to conform as nearly as practicable to the United States system of public-land surveys and the rectangular subdivisions of such surveys. 143

Wood Placer M. Claim, 32 L. D. 198.

A gulch placer claim which can not, by reason of its environment, practicably be conformed to the system of public-land surveys and the rectangular subdivisions thereof, may, upon sufficient and satisfactory showing, be entered, if in shape and position approximating such system as nearly as the conditions will reasonably permit. 144

Wood Placer M. Co., 32 L. D. 363.

In all cases involving gulch placer claims, a full and explicit report touching the situation and scope of the claim or claims involved and the physical or topographical conditions surrounding them which are relied on to bring them within the principle applicable to gulch placers should be required of the deputy mineral surveyor who makes the survey, to be verified under the certificate of the surveyor-general, and that such other evidence should be required as may in any case be deemed necessary to satisfactorily establish the existence of the proper and requisite conditions. 145

Wood Placer M. Co., 32 L. D. 401.

A location under the mining laws does not of itself amount to an appropriation of land in such a sense as to preclude inclusion of the same, or parts thereof, within the limits of a subsequent location subject to such existing rights as may be thereafter maintained under the prior location; and the fact that a placer location, if made to conform to legal subdivisions of the public surveys, would embrace all or a portion of the land covered by a prior location, is not a sufficient reason for failure to conform the placer location to legal subdivision. 146

Rialto No. 2 Placer M. Claim, 34 L. D. 44.

The fact that a portion of other claims already entered may be embraced in a placer location by confirming the same to legal subdivisions does not make such conformity impracticable within the meaning of the Revised Statutes, inasmuch as, under the law, such entered claims may be excluded from patent proceedings involving the placer. 147

Rialto No. 2 Placer M. Claim, 34 L. D. 44.

A placer location and patent confers neither title nor right of possession to lodes and veins known to exist within its limits at the time patent is applied for, and a subsequent locator of such lode or vein is not a trespasser upon the rights of a placer locator. 148

The Mt. Rosa M. Co. *v.* Palmer, 26 Colo. 56.

A vein lying within the limits of a placer patent is not excluded therefrom as a known vein or lode unless at the date of the application the lode or vein was clearly ascertained, and of such an extent and value as to justify exploitation. 149

Migeon *v.* Montana R. R., 77 Fed. 249.

The existence of a lode within a placer must be actually known, not presumed from the character of the ground. 150

Clipper Co. *v.* Eli Co., 68 Pac. 268.

Prospector can not enter on located placer ground to search for lodes. 151

Clipper Co. *v.* Eli Co., 194 U. S. 220.

By the term placer mine, as here used, is meant ground within defined boundaries which contains mineral in its earth, sand, or gravel; ground that includes valuable deposits not in place, that is, fixed in the rock, but which are in a loose state, and may, in most cases, be collected by washing or amalgamation without milling. 152

U. S. *v.* Iron Silver Co., 128 U. S. 673.

TUNNEL SITES.

Section 2323 contemplates that tunnels may be run for the development of veins or lodes, for the discovery of mines, and gives a right of possession of such veins or lodes if not previously known to exist, and makes the location of the surface after the commencement invalid. 160

Calhoun M. Co. *v.* Ajax M. Co., 182 U. S. 499.

The location of a tunnel site for mining purposes must be made in subordination to prior lode claims and the tunnel has no right of way through them. 161

Calhoun M. Co. *v.* Ajax M. C., 182 U. S. 499.

The discovery of a vein in a tunnel worked according to the Revised Statutes, Section 2323, gives a right to the possession of the vein to the same extent as if discovered from the surface, and a location on the surface is not essential to a continuance of that right. 162

A record of such claim in connection with the notice at the mouth of the tunnel under the terms of the statute gives title to the vein discovered without staking on the surface.

Campbell *v.* Ellet, 167 U. S. 116.

163 The clear import of the language of the Revised Statute 2323 is to give a tunnel owner discovering a vein in the tunnel a right to appropriate 1500 feet in length on that vein; which right arises upon the discovery of the vein in the tunnel; dates by relation back to the time of the location of the tunnel site; may be exercised by locating the claim the full length of 1500 feet on either side of the tunnel or in such proportion thereof on either side as the locator may desire.

Enterprise M. Co. v. Rico Aspen Con. M. Co., 167 U. S. 108.

164 Blind veins underneath prior lode claims belong to the surface location under United States Revised Statute 2322, and their discovery by running a tunnel, under Revised Statutes, Section 2323, does not give the owner of the tunnel any right to them.

Calhoun M. Co. v. Ajax M. Co., 182 U. S. 499.

165 Patents of lode mining claims based on entries made after the location of a claim for a tunnel site across them are subject to the rights of the claimant of the tunnel site in cases in which his rights therein were so uncertain, contingent, and intangible that they could not be fairly litigated when the applications for the patents were made.

Uinta Co. v. Creede Co., 119 Fed. 164.

166 Such rights as are conferred by a valid prior location, so long as it remains in full force and effect, are preserved from invasion, and can not be infringed upon or impaired by subsequent locations and are as fully protected under the rules of the common law as any other classes of real estate. Under the statutes the subsequent locator has no right to penetrate a senior valid subsisting location underneath its surface boundaries extended downward vertically, except for the purposes specified in the mining laws. We will not undertake to specify what these exceptions may be, but, so far as they are not fixed by statute, the possession and enjoyment of the ground underneath the surface of a valid, subsisting location can not be invalid. These exceptions do not include the right to drive a tunnel through such a location for the purposes of discovery.

Calhoun G. M. Co. *v.* Ajax G. M. Co., 27 Colo. 1; affirmed, 182 U. S. 499.

167 The striking characteristic of this section of the code is that it gives the right of possession of certain veins or lodes to the diligent owner of a tunnel before his discovery or location of any vein or lode whatever, contingent only upon his subsequent discovery of such veins in his tunnel. This section declares that the owners of a tunnel, by simply locating and diligently prosecuting it, without the discovery of any vein or lodes within 3,000 feet from the face of such tunnel on the line thereof not previously known to

exist, discovered in such tunnel to the same extent as if discovered from the surface.

Enterprise M. Co. *v.* Rico Aspen, 167 U. S. 108.

MILLSITE.

The right to a patent for a millsite under the second clause of Section 2337, Revised Statutes, depends upon the presence on the land applied for of a quartz mill or reduction works. 170

Brodie Gold Reduction Co., 29 L. D. 143.

The expenditure of $500 upon a mill site is not a condition precedent to obtaining a patent therefor, when the applicant is also the proprietor of a lode and the millsite is located in connection therewith. 171

In such case it is only required that the mill site shall be used or occupied for mining or milling purposes.

Alta Millsite, 8 L. D. 195.

The non-mineral character of the land claimed as a millsite must be established. 172

Alta Millsite, 8 L. D. 195.

The use and occupancy of land for the maintenance of pumping works necessary to the operation of a lode mine is such a use as will authorize entry of the land as a millsite. 173

Sierra Grande M. Co. *v.* Crawford, 11 L. D. 338.

The requisites of the statutes where a millsite is claimed in connection with a mine are: 174

1. The land must be nonmineral;
2. Noncontiguous to the lode, and
3. Used or occupied by the proprietor of the lode for mining or milling purposes.

Gold Springs and Denver City Millsite, 13 L. D. 175.

The use and improvement of land for the maintenance of a water supply necessary to the operation of a mine is such a use and occupancy as will authorize a millsite entry, where the land is also required for the location of reduction works. 175

Gold Springs and Denver City Millsite, 13 L. D. 175.

The erection and maintenance in good faith of dwelling houses for the occupancy of workmen employed for purposes in connection with a mill is such a use and occupancy of the land as will justify the allowance of a millsite entry thereof. 176

Satisfaction Extension Millsite, 14 L. D. 173.

Under the first clause of Section 2337, Revised Statutes, the owner of a patented lode may, by an independent application, secure a millsite if good faith is manifest and the improvements sufficient, and no adverse claim exists. 177

Eclipse Millsite, 22 L. D. 496.

Section 2337 of the Revised Statutes contemplates that at the time application is made for patent to a millsite claim the land embraced therein is being used or occupied for mining or milling purposes. 178

Hard Cash and other millsite claims, 34 L. D. 325.

Section 2337 does not contemplate that patent may be obtained for a separate millsite for each of a group of contiguous lode claims held and worked under a common ownership, and where more than one millsite is applied for in connection with a group of lode claims a sufficient and satisfactory reason therefor must be shown. 179

Hard Cash and other millsite claims, 34 L. D. 325.

A millsite can not be located upon mineral land, nor can it subsequently be patented upon mineral land, whether the millsite be a separate application or applied for in connection with a lode. 180

Cleary *v.* Skiffich, 28 Colo. 362.

Subsequent discovery of mineral will not vitiate a millsite location on what was at the time considered nonmineral land. 181

Id.

Building cabin used for storing tools and ore house held sufficient possession for mining or milling purposes under the statute. 182

Hartman *v.* Smith, 7 Mont. 19.

It is a sufficient possession of a millsite claim to maintain ejectment therefor, that its corners are marked with painted posts, as it is the custom in locating such millsites, and that the claimant has a house and stable thereon and has constructed tunnels to increase the flow of springs and built a wagon road to his mines, thus indicating a present and continuous use. 183

Valcalda *v.* Silver Peak Mines, 89 Fed., 90 Nev.

AGENT.

The law makes the discoverer the agent of those for whom he chose to act, and makes his act their act, regardless of whether they have any knowledge of it or not. 190

Morton *v.* Salambo M. Co., 26 Cal. 463.

Any citizen who is entitled to locate a lode on the public domain may perform all necessary acts of appropriation and development through the agency of others. 191

Murley *v.* Ennis, 2 Colo. 300.

An agent may locate a mining claim, but unless specially authorized to do so can not divest his principal of the title so acquired. 192

Gore *v.* McBrayer, 18 Cal. 583.

If A in locating use the name of B, he can not sue for the claim in his own name; his position is that of a servant to the owner, and his possession the possession of the other. 193

Van Valkenburg *v.* Huff, 1 Nev. 142.

A relocation by an agent for himelf inures to his principal. 194

Lockhart *v.* Rollins, 21 Pac. Rep. 413.

The owner of a part interest in a mining claim is a cotenant with the other owners; and if, without their knowledge, he procures a patent in his own name, he becomes a trustee for them, and equity will enforce the trust in their favor. 195

Turner *v.* Sawyer, 150 U. S. 578.

One of the cotenants of a mining claim who, on the annual assessment work thereon not being done, relocated the same, holds it as trustee for all the cotenants, notwithstanding United States Revised Statutes, Section 2324, providing that on a failure to comply with conditions as to labor and improvements, the claim shall be open to relocation in the same manner as if no location of the same had ever been made. 196

McCarthy *v.* Speed, 11 S. D. 362.

When a mining location is made by one person in his own name at the request and expense of, and for the benefit of, another person, such other person is legally entitled to the possession of the mining ground so located. 197

The locator, in such a case, holds the legal title in trust for the benefit of the person at whose expense the location was made.

Book *v.* Justice M. Co., 58 Fed. 106.

198 A party in whose name a location of a mining claim is made is presumed, *prima facie*, to assent to the same.

Van Valkenburg *v.* Huff, 1 Nev. 142.

199 It is not necessary that the markings of the location on the ground be done by the locator in person; such markings may be done by the agents or employees of the locator as well as by the locator himself. Nor is it necessary that a discovery of gold be made by the locator in person; a discovery of gold made by an agent or employee of the locator, or by any person acting in his behalf and for his benefit, and if made before any intervening rights attach, will be just as valid as if made by the locator in person.

Walton *v.* Wild Goose M. Co., 123 Fed. 209.

WATER.

201 Appropriation gives a vested right to water, and all subsequent titles are subservient thereto.

Hill *v.* Lenormand, 16 Pac., 266 Ariz.

202 A homestead claimant's rights to water flowing through his ground are subject to the rights of a prior appropriator.

So. Uba Co. *v.* Rosa, 80 Cal. 333.

203 The filing of a homestead entry prevents subsequent diversion of water running across the land.

Sturr *v.* Beck, 133 U. S. 541.

204 The right of appropriation on the Pacific Slope was established law before the passage of any Congressional act on the subject.

Isaacs *v.* Barber, 38 Pac. 871.

205 All uses must be beneficial. Irrigation has no precedence over mining use.

Union Co. *v.* Dangberry, 81 Fed. 73.

206 The appropriator of water, to be used at a specified place for the purpose of operating machinery and other works, after so using and returning it to its original channel, can not change the place of use to the damage of a subsequent appropriator lower down the stream.

Last Chance Co. *v.* Bunker Hill Co., 49 Fed. 430 Idaho.

The prior appropriator of a stream of water for mining purposes has a right to have the water flow down above the point of his appropriation without interruption or diminution in quantity. 207

Phoenix W. Co. *v.* Flecher.

The upper mill must recognize the rights of the mills below and impound its tailings or otherwise prevent their injurious flow to mills below, and the lower mill must stand the consequence of such slight injury as the upper can not prevent. 209

Otaheite Co. *v.* Dean, 102 Fed. 929 Nev.

By the custom which has obtained among miners in the Pacific States and Territories where mining for the precious metals is had on the public lands of the United States, the first appropriator of mines, whether in placers, veins, or lodes, or of the waters in the streams of such lands for mining purposes, is held to have a better right than others to work the mines or use the waters. 210

The first appropriator who subjects the property to use, or takes the necessary steps for that purpose, is regarded as against the government as the source of title in all controversies relating to the property. As respects the use of water for mining purposes, the doctrines of the common law, declaratory of the rights of riparian owners, were at an early day after the discovery of gold found to be inapplicable, or applicable only in a very limited extent, to the necessities of miners, and inadequate to their protection.

Atchison *v.* Peterson, U. S. Supreme Court 1874.

No proprietor has the right to use the water to the prejudice of other proprietors above or below him, unless he has a prior right to divert it or a title to some exclusive enjoyment. 211

Id.

But the government being the sole proprietor of all the public lands, whether bordering on streams or otherwise, there is no occasion for the application of the common-law doctrine of riparian proprietorship with respect to the waters of those streams. The government, by its silent acquiescence, assented to the general occupation of the public lands for mining and, to encourage their free and unlimited use for that purpose, reserved such lands as were mineral from sale and the acquisition of title by settlement. And he who first connects his own labor with property thus situated, and open to general exploration, does in natural justice acquire a better right to its use and enjoyment than others who have not given such labor. So the miners on the public lands throughout the Pacific States and Territories by their customs, usages, and regulations, everywhere recognized the inherent justice of this principle; and the principle itself was, at an early period, recognized by legislation and enforced by the courts in those States and Territories. 212

Id.

213 It is not absolutely essential that water should be perfectly clear and pure in order that it may be used for ordinary milling purposes. If it were, but few mills could be operated, especially on the banks of mountain streams like the one in question; for the natural flow of the water over a sandy or loose soil would gather up more or less sediment, while, in the case of heavy freshets, which occur every spring from the melting of snow in the mountains, rocks, tailings, sand, and other debris will cause more or less inconvenience, detriment, and injury to every quartz-mill owner, whether there are any mills above him or not.

Equity does not require the water to be sent away from a mill as pure and unadulterated as it was when it left the springs or creek before being used in the mill.

There are always more or less light substances, deleterious in their nature, carried in suspension flowing with the water, which only settles, if at all, when deposited in the settling tank or cribs, and then only when the water is comparatively still. Annoyance from this source can not be avoided.

Otaheite M. Co. *v.* Dean, 102 Fed. 929.

ALIENS.

220 The rights of a citizen locator are not affected by the fact of a colocator being an alien.

Strickley *v.* Hill, 22 Utah 257.

221 An alien holding title by grant can pass good title to his grantee at any time before governmental inquiry to set aside his holding.

Id.

222 Service in the army of the United States gives the alien soldier the status of one who has declared his intention to become a citizen.

Id.

223 A deed of a mining claim by a qualified locator to an alien operates as a transfer of the claim to the grantee, subject to question in regard to his citizenship by the government only.

Manuel *v.* Wulff, 152 U. S. 505.

224 Naturalization relates back. In a suit supporting an adverse claim where a party who was an alien at the outset becomes a citizen during the proceedings and before judgment, his disability to take title is thereby removed.

Id.

Stockholders of American corporations are conclusively presumed to be citizens. 225

Doe *v.* Waterloo, 70 Fed. 455.

The location of a mining claim by an alien and the rights following therefrom are voidable, not void, and are free from attack by any one except the government. 226

McKinley Creek M. Co. *v.* Alaska M. Co., 183 U. S. 563.

A corporation created under the laws of one of the States and all its members citizens of the United States is competent to locate or join in the location of a mining claim upon the public domain in like manner as individual citizens. 227

McKinley *v.* Wheeler, 130 U. S. 630.

Alienage is not a disability of which advantage can be taken by a citizen in a contest with an alien. It is the office of the government only to declare a forfeiture of the alien's estate. 228

Territory *v.* Lee, 2 Montana 124.

No distinction is made in locating mining claims on account of the sex of the locator. 229

Commissioner to Eureka Land Office.

A corporation organized under the laws of a State is a citizen and entitled to purchase and hold a mining claim. 230

North Noonday Co. *v.* Orient Co., 1 Fed. 522.

UNITED STATES MINERAL SURVEYOR.

Section 452, Revised Statutes of the United States: 231

"The officers, clerks, and employees in the General Land Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and the person who violates this section shall forthwith be removed from office."

It was the intention of Congress to prohibit, on the ground of public policy, the officers, clerks, and employees in the general land office from acquiring, directly or indirectly, an interest in the purchase from the government of any of the public land of the United States.

The act forbidding acquisition of title by such employees covers the case of a deputy United States mineral surveyor, and his location of a mining claim is therefore void and his conveyance of such title passes no title. 232

Lavignino *v.* Uhlig, 71 Pac. 1046 Utah.

233 The Honorable Secretary of the Interior, in the case of Herbert McMicken et al., 10 L. D. 97 and 11 L. D. 96, has decided that the disqualification to enter public lands contained in said section extends to officers, clerks, and employees in any of the branches of the public service under the control and supervision of the Commissioner of the General Land Office in the discharge of his duties relating to the survey and sale of public lands.

In accordance with said decision all officers, clerks, and employees in the offices of the Surveyors General, the local land offices, and the General Land Office or any persons, wherever located, employed under the supervision of the Commissioner of the General Land Office are, during such employment, prohibited from entering or becoming interested, directly or indirectly, in any of the public lands of the United States.

Lewis A. Goff, Commissioner, circular Sept. 15, 1890.

234 Clerks in the office of the Surveyor-General are clerks or employees in the office of the Commissioner of the General Land Office in contemplation of law, therefore, under the inhibition of Section 452 of the Revised Statutes, disqualified to enter public lands.

Herbert McMicken et al., 11 L. D. 96.

235 Secretary Noble held that an officer, clerk, or employee in the office of a United States Surveyor General is an officer, clerk, or employee in the General Land Office within the meaning of this section.

In Muller *v.* Coleman, 18 L. D. 394, Secretary Smith held that a deputy mineral surveyor is such an employee, and in the Neil case, 24 L. D. 393, the present secretary held that a United States Surveyor-General is within the inhibition so declared.

It seems clear that its prohibitive provisions embrace a deputy mineral surveyor.

Floyd *v.* Montgomery, 26 L. D. 122.

236 A deputy mineral surveyor, while holding such office, is disqualified as a mineral entryman.

Secretary Hitchcock to Commissioner, July 31, 1899.

237 The surveyor is an official of the United States Government and acts in that capacity and not as an agent or attorney of the owners of mining claims.

Basin M. and C. Co. *v.* White, 22 Mon. 147, 1899.

238 Under the prohibitive provisions of Section 452, Revised Statutes, Surveyors-General and deputy mineral surveyors are disqualified as applicants for mineral land.

Alfred Baltzell et al., 29 L. D. 333.

A timber-land entry made by an employee in the office of the Surveyor-General of the district in which the land is situated is illegal and must be canceled. 239

Herbert McMicken et al., 10 L. D. 97.

Extend to officers, clerks, and employees in any of the branches of the public service under the control and supervision of the Commissioner of the General Land Office in the discharge of his duties relating to the survey and sale of the public lands. 240

Herbert McMicken et al., 10 L. D. 97.

This office will recommend the removal or dismissal of any of the above-named officers, clerks, or employees who shall, either for themselves or others, in any manner negotiate for, buy, sell, or locate any warrant, scrip, lieu-land selection, soldiers' additional right, or any other negotiable right or claim under which an interest in public lands may be asserted, as well as such officers, clerks, or employees who shall, except in the discharge of an official duty, help or in any manner whatever aid or assist in any such negotiations, purchases, sales, or locations as may be made by others for speculative purposes, or who shall in any manner whatever, except in the discharge of an official duty, furnish any information to, or in any manner be in communication with, any person, firm, or corporation dealing in any such rights, in relation to such rights. 241

While Section 452 of the Revised Statutes does not prohibit the acquisition of title to the public lands of the United States under appropriate laws by the wives of officers, clerks, and employees of the Land Department, it is not deemed advisable or proper in the interest of good administration that they should do so. Accordingly such officers, clerks, and employees are advised that the application, entry, purchase, or acquisition of title, directly or indirectly, to any of the public lands by their wives prior to the separation from the service of such officers, clerks, or employees, will be deemed a sufficient cause upon which to base a recommendation for removal or dismissal from the service of the officer, clerk, or employee whose wife acquires or seeks to acquire title to any of the public lands.

Circular from General Land Office, May 12, 1906.

An individual or corporation, or combination of certain named individuals or corporations can have no legal right to the exclusive services of a mineral surveyor who is, in contemplation of the law, a public officer of the Land Department of the government. 242

A deputy mineral surveyor, in making the survey of a mining claim, is the official agent of the government, and must have no interest, either direct or indirect, in the ultimate issue of the case, and such necessary disinterestedness is incompatible and inconsistent with a permanent contract for the exclusive professional

services of the deputy with the owner of the claims which he undertakes, in the sole capacity of a deputy mineral surveyor, to officially survey.

Commissioner to Surveyor-General, S. D., March 31, 1899.

CALIFORNIA.

Owing to the absence of State laws on the subject, mining locations are governed by the United States statutes alone.

See article Location and Record.

WATER.

California statute:

Sec. 1410. The right to the use of running water flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation.

Sec. 1411. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases.

Sec. 1412. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

Sec. 1413. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

Sec. 1414. As between appropriators, the first in time is the first in right.

Sec. 1415. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water flowing to the extent of (giving the number) inches, measured under a four-inch pressure;

2. The purpose for which he claims it, and the place of intended use;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it. A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

Sec. 1416. Within sixty days after the notice is posted the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion unless temporarily interrupted by snows or rain; provided, that if the erection of a dam has been recommended by the California Debris Commission at or near the place where it is intended to divert the water, the claimant shall have sixty days after

the completion of such dam in which to commence the excavation or construction of the works in which he intends to divert the water.

Sec. 1417. By "completion" is meant conducting the waters to the place of intended use.

Sec. 1418. By a compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.

Sec. 1419. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith.

Sec. 1420. Persons who have heretofore claimed the right to water and who have not constructed works in which to divert it and who have not diverted nor applied it to some useful purpose must, after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.

Sec. 1421. The recorder of each county must keep a book in which he must record the notices provided for in this title.

The miners' inch mentioned in subdivision 1 of Section 1415 amounts in practice to 1.2 cubic feet per minute or 1,728 cubic feet per day, and is sufficient in quantity to fill a tank 12 feet square at the rate of 6 inches per hour.

ARIZONA.

A lode-claim location may be made by:

1. Discovery.

2. At discovery erect a monument of stone 3 feet high or a post 4 feet above ground, on which

3. Post a notice containing:

Name of the claim.

Name or names of the locators.

Date of the location.

Length and width of the claim, and distance from each end to the discovery point.

General course of the claim.

Its location, with reference to some natural object or permanent monument.

4. To monument the claim so its boundaries may be readily traced, with 6 posts, 4 inches square, 4 feet above ground, or with stone monuments at least 3 feet high, one at either corner of the claim and one at each end of the lode line.

A period of 90 days is then allowed the locator to do the following:

5. Record with the county recorder of the county where the claim is located, a copy of the location notice.

6. Sink a discovery shaft at least 10 feet deep or deeper, showing mineral in place, or as an equivalent, any open cut, adit, or tunnel which will equal a shaft 10 feet deep and four feet wide by six feet long, and which shall cut mineral at a depth of 10 feet.

RELOCATION.

A relocation of an abandoned lode claim shall be made in accordance with the above provisions except that the relocator may, if he so elect, perform his location work by sinking the original location shaft 10 feet deeper than it was originally, or in case the original location work consisted of a tunnel or open cut, he may perform his location work by extending said tunnel or open cut by removing therefrom 240 cubic feet of rock or vein material.

PLACER CLAIMS.

Placer claims may be located by:

1. Discovery.
2. Posting on the ground claimed a location notice containing:

Name of the claim.

Name of the locator.

Date of the location.

Number of acres claimed.

Description of the claim with reference to some natural object or permanent monument that will identify the claim.

3. Marking the boundaries at the corners with posts 4½ feet long, 4 inches square, set 1 foot in the ground, surrounded with mound of stone or earth, or a monument of stone at least 3 feet in height and 4 feet in diameter at the base.

4. Within 60 days after the date of location, a copy of the location notice must be recorded in the office of the county recorder.

No local tunnel-site laws.

WATER.

Any person or persons, company, or corporation shall have the right to appropriate any of the unappropriated waters or the surplus of flood waters in this terirtory for beneficial use for irrigation, mining, or manufacturing purposes, subject to existing rights, and such person or persons, company, or corporation, for the purpose of making such appropriation of waters as herein specified, shall have the right to construct and maintain reservoirs, dams, canals, ditches, flumes, and any and all other necessary waterways. And the person or persons, company, or corporation, first appropriating water for the purposes herein mentioned shall always have the better right to the same.

NEVADA.

Lode-claim locations may be made by any citizen on the unappropriated public domain or on privately owned, unfenced, and unimproved land by:

1. Discovery.
2. Posting at discovery a preliminary notice of location containing:

The name of the lode.

The name or names of the locator or locators.

The date of the location.

The number of feet claimed on each side of the discovery point, and the width on each side at the same place.

The general course of the vein as near as can be.

3. Within 20 days the boundaries must be defined by marking the four corners and the middle of the side lines with a tree stump not less than 4 inches in diameter 3 feet above ground, blazed and marked; or

A rock in place with a capping of smaller stones with a similar height; or

A post 4½ feet long, 4 inches square, showing 4 feet above ground; or

A stone not less than 6 inches in diameter by 18 inches in length, set two-thirds of its length in the top of a mound of earth or stone, 4 feet in diameter and 2½ feet in height.

All such corners when not 4 feet in diameter at the base shall be surrounded with a mound of stone or earth 4 feet in diameter and 2 feet high, and all corners shall be so marked as to designate their respective corners.

4. File with the district mining recorder, or, if in a district where there is none, with the county recorder,

A substantial copy of the former or preliminary location notice with the addition of the date on which the boundaries of the claim were marked.

This recording is not compulsory, but is allowed and tends to clear up the title in case of contest.

5. Within 90 days after the date of posting the location notice, there must be recorded with both the district mining recorder (if there is one) and with the county recorder, a location certificate containing:

The name of the lode or vein.

The name of the locator or locators.

The date of the location, and such a

Description of such claim, by reference to some natural object or permanent monument as will identify said claim.

The number of linear feet claimed along the course of the vein each way from the point of discovery, with the width on each side of the center of the vein as near as may be.

The dimensions and location of the discovery shaft or its equivalent, sunk upon the claim.

The location and description of each corner, with the markings thereon.

It is made a felony punishable by imprisonment in the State prison for any person to antedate or put any false date on any notice of location of a mining claim.

RELOCATION.

A relocation of an abandoned lode claim may be made by excavating a new discovery and fixing new boundaries as with a new claim; or by

Sinking the old discovery shaft 10 feet deeper, in which case the record must give the depth and dimensions of the original discovery excavation at the date of the relocation.

It is optional whether old or new boundaries are erected. In the former case the old posts or monuments would have to be renewed, but in either case a new location stake would have to be erected.

In any case the record should state that the whole or any part of the new location is abandoned property. Should, however, the locator not know that the claim is on an abandoned claim, then the provisions of the section do not apply.

PLACER CLAIMS.

A placer claim may be located after discovery by:

1. Posting thereon upon a tree, rock in place, stone, post, or monument, a notice of location, containing:

Name of claim.

Name of locator or locators.

Date of location.

Number of feet or acres claimed.

2. Marking boundaries and the location point as required for lode claims; provided,

Where the land has been previously subdivided by the public-land surveys, the claim may be taken by legal subdivisions and except the location point, no other markings will be required.

3. Within 90 days after the posting of the notice of location the locator shall perform not less than $20 worth of labor upon the claim for the development thereof, and shall have

Recorded by the mining-district recorder and the county recorder of the district and county in which the claim is situated a certificate, which shall state:

Name of the claim (designated as placer claim).

Name of locator or locators.

Date of location.

Number of feet or acres claimed.

Description of claim with regard to some natural object or permanent monument as will identify the claim.

The kind and amount of work done by him, and the

Place on the claim where said work was done.

TUNNEL RIGHT.

Tunnel location may be acquired by:

1. Posting notice at the point of commencement of work, and must contain:

Name of locator.

Date of location.

Proposed course of tunnel.

Height and width of proposed tunnel.
Boundary monuments, position and character.

2. Boundary lines must be marked by ten monuments of the same type and character as for lode claims, and must be placed at intervals of 300 feet along the proposed course of the tunnel.

3. Within 60 days of the date of location, there must be filed with the mining-district recorder and with the county recorder of the county and district where the tunnel is located, an exact copy of the location notice posted.

The statute further exacts that on the discovery of a blind vein it shall be marked on the surface and held in like manner as other lode claims.

While the legality of this is questionable, it would be best to observe it if possible.

MILLSITE.

Millsites not exceeding 5 acres in extent in any form may be located by posting a written location notice thereon, which must contain:

1. The name of the locator or locators.

2. The name of the vein or lode claim of which he is the proprietor, or the name of the quartz mill or reduction works of which he is the owner.

3. The date of the location.

4. The number of feet or acres claimed.

5. The description of the claim by reference to some natural object or permanent monument as will identify the claim or millsite.

6. By marking the boundaries at each corner in similar manner as provided for marking the corners of quartz claims.

7. An exact copy of this location notice shall be recorded with the mining-district recorder and county recorder of the district and county in which such location was situated, within thirty days.

OREGON.

A lode mining claim may be located by any citizen or one who had declared his intention to become such after discovery of mineral-bearing rock in place upon the unappropriated public domain of the United States by

1. Posting notice thereon containing:

The name of the lode or claim.

The name of the locator or locators.
Date of the location.
Number of feet claimed each way from discovery.
Width on each side of vein.
General course of vein by reference to some natural object.
Description of boundaries, so they may be readily traced.

2. Within 30 days the boundaries must be marked by six substantial posts 4 inches or more square, not less than three feet above ground; or
By mounds of stone, or earth and stone 2 feet or more in height, one at each corner and one at each end of the lode line.

3. Within sixty days from the posting of the notice of discovery
Sink a discovery shaft 10 feet, showing mineral in place; or, as a substitute,
A cross-cut or tunnel which cuts the lode at a depth of 10 feet; or
An open cut at least 6 feet deep, 4 feet wide, and 10 feet in length along the lode where the lode is in evidence.

4. The locator or some one for him who did work upon and has knowledge of the discovery excavation, shall make and attach to the copy of the notice of location an affidavit showing compliance with the above requirements.

5. Within 60 days from the date of posting the location notice, a copy of the notice so posted, having attached the above affidavit of discovery work, shall be filed for record with the recorder of conveyances, if there be one, otherwise with the clerk of the county.

But one location is allowed to be made on each lead or vein previously discovered, but where a new discovery is made an additional location is allowed the discoverer.
No local placer laws.
No local tunnel-site laws.

OCT 24 1906